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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID SUMMER, Derivatively on Behalf of)
Behalf of YAHOO! INC.,)

Plaintiff,)

v.)

MARISSA A. MAYER, DAVID FILO,)
KENNETH A. GOLDMAN, ERIC K.)
BRANDT, MAYNARD G. WEBB, JR.,)
THOMAS J. MCINERNEY, JANE E. SHAW,)
CATHERINE J. FRIEDMAN, TOR R.)
BRAHAM, EDDY W. HARTENSTEIN,)
RICHARD S. HILL, JEFFREY C. SMITH,)
MAX R. LEVCHIN, SUSAN M. JAMES,)
CHARLES R. SCHWAB, H. LEE SCOTT,)
JR., and PETER LIGUORI,)

Defendants,)

and)

YAHOO! INC., a Delaware corporation,)

Nominal Defendant.)

Case No. 5:17-cv-00787-LHK

**STIPULATION AND ~~PROPOSED~~
ORDER CONSOLIDATING RELATED
DERIVATIVE ACTIONS AND
APPOINTING LEAD COUNSEL FOR
PLAINTIFFS**

Date Action Filed: February 16, 2017

[Caption continued on next page.]

Case No. 5:17-cv-00810-LHK

Date Action Filed: February 17, 2017

WHEREAS, there are presently two related stockholder derivative actions currently pending in this District against the Individual Defendants,¹ who are certain current and former directors and officers of nominal defendant Yahoo! Inc. ("Yahoo") (Yahoo, together with the Individual Defendants, is collectively referred to herein as "Defendants"): *Summer v. Mayer, et al.*, Case No. 5:17-cv-00787-LHK and *Bowser v. Mayer, et al.*, Case No. 5:17-cv-00810-LHK (together, the "Related Derivative Actions");²

WHEREAS, under Fed. R. Civ. P. 42(a), when actions involve "a common question of law or fact," the Court may "(1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay";

WHEREAS, the Related Derivative Actions challenge similar alleged conduct by Yahoo's directors and executive officers and involve common questions of law and fact;

WHEREAS, the parties therefore respectfully submit that consolidation of the Related Derivative Actions is appropriate;

WHEREAS, to avoid potentially duplicative actions and to prevent any waste of the Court's resources, the parties agree that the Related Derivative Actions should be related and

¹ The "Individual Defendants" include Marissa A. Mayer, David Filo, Kenneth A. Goldman, Eric K. Brandt, Maynard G. Webb, Jr., Thomas J. McInerney, Jane E. Shaw, Catherine J. Friedman, Tor R. Braham, Eddy W. Hartenstein, Richard S. Hill, Jeffrey C. Smith, Max R. Levchin, Susan M. James, Charles R. Schwab, H. Lee Scott, Jr., and Peter Liguori.

² Additionally, one consolidated putative class action alleging violations of the federal securities laws against Yahoo and certain Yahoo officers is pending in this District: *In re Yahoo! Inc. Securities Litigation*, Case No. 5:17-cv-00373-LHK (the "Securities Class Action"). The Related Derivative Actions assert different claims for liability but involve some of the same parties and factual allegations as the Securities Class Action. For clarity, the Related Derivative Actions and the Securities Class Action should not be consolidated with one another. While the Related Derivative Actions and the Securities Class Action should be related under Civil Local Rule 3-12, they are not suitable for consolidation because, among other reasons, the Securities Class Action alleges violations of the federal securities laws against Yahoo, whereas plaintiffs in the Related Derivative Actions purport to bring claims on behalf of Yahoo.

consolidated for all purposes, including pre-trial proceedings and trial, into a single consolidated action (hereinafter referred to as the "Consolidated Derivative Action");

WHEREAS, the parties agree that Robbins Arroyo LLP shall be designated as Lead Counsel representing plaintiffs in the Consolidated Derivative Action;

WHEREAS, it is anticipated that plaintiffs will file a consolidated amended complaint, and Defendants anticipate filing one or more motions to dismiss;

WHEREAS, counsel for the undersigned parties agree that deferring the response deadlines for all Defendants until after plaintiffs file their anticipated consolidated amended complaint will conserve party and judicial resources; and

WHEREAS, the parties further agree that an initial case management conference, attendant deadlines, and related ADR procedures are premature prior to Defendants' anticipated motions to dismiss and should be deferred until the Court issues a ruling on Defendants' anticipated motions to dismiss.

WHEREFORE, the parties, through their undersigned counsel, hereby agree, stipulate, and respectfully request that the Court enter an Order as follows:

1. Defendants hereby acknowledge service of the summonses and complaints in the Related Derivative Actions. Aside from defenses and objections related to the absence of a summons or of service, Defendants expressly reserve all defenses and objections to the complaints filed in the Related Derivative Actions and any complaints filed in the Consolidated Derivative Action, including but not limited to defenses based on lack of personal jurisdiction and improper venue.

2. Defendants need not answer, move or otherwise respond to any of the complaints currently filed in the Related Derivative Actions.

3. The following actions shall be consolidated for all purposes, including pre-trial proceedings and trial, into one consolidated action:

<u>Case Name</u>	<u>Case No.</u>	<u>Filing Date</u>
<i>Summer v. Mayer, et al.</i>	5:17-cv-00787-LHK	February 16, 2017
<i>Bowser v. Mayer, et al.</i>	5:17-cv-00810-LHK	February 17, 2017

4. Every pleading filed in the Consolidated Derivative Action, or in any separate action included herein, must bear the following caption:

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA	
IN RE YAHOO! INC. SHAREHOLDER DERIVATIVE LITIGATION	Lead Case No. 5:17-cv-00787-LHK (Consolidated with No. 5:17-cv-00810-LHK)
This Document Relates To: ALL ACTIONS.	Hon. Lucy H. Koh Courtroom: 8, 4th Floor

5. The files of the Consolidated Derivative Action will be maintained in one master file under Lead Case No. 5:17-cv-00787-LHK.

6. Lead Counsel for plaintiffs for the conduct of *In re Yahoo! Inc. Shareholder Derivative Litigation*, Lead Case No. 5:17-cv-00787-LHK, is designated as follows:

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 farroyo@robbinsarroyo.com
 ssanders@robbinsarroyo.com

7. Plaintiffs' Lead Counsel will be responsible for coordinating all activities and appearances on behalf of plaintiffs and for the dissemination of notices and orders of this Court.

1 The parties further agree that no motion, request for discovery, or other pre-trial or trial
2 proceedings will be initiated or filed by any plaintiffs except through plaintiffs' Lead Counsel.

3 8. Defendants' counsel may rely upon all agreements made with any of plaintiffs'
4 Lead Counsel, or other duly authorized representative of plaintiffs' Lead Counsel, and such
5 agreements will be binding on plaintiffs.

6 9. This Order shall apply to each purported derivative action arising out of the same
7 or substantially the same transactions or events as the Related Derivative Actions that is
8 subsequently filed in, removed to, or transferred to this Court.

9 10. If a case that properly belongs as part of *In re Yahoo! Inc. Shareholder Derivative*
10 *Litigation*, Lead Case No. 5:17-cv-00787-LHK, is hereafter filed in this Court or transferred here
11 from another court, plaintiffs' Lead Counsel shall promptly call to the attention of the Clerk of
12 the Court the filing or transfer of any case that might properly be consolidated as part of *In re*
13 *Yahoo! Inc. Shareholder Derivative Litigation*, Lead Case No. 5:17-cv-00787-LHK.

14 11. In the interest of efficiency and avoidance of unnecessary duplication of effort or
15 judicial resources by the Court or the parties, it is further Ordered that (i) within twenty-one (21)
16 days of the entry of an order consolidating the Related Derivative Actions, Plaintiffs' shall file a
17 consolidated complaint, and (ii) the parties shall meet and confer within seven (7) days of
18 Plaintiffs filing the consolidated complaint and propose a schedule with the Court regarding
19 further proceedings in the Consolidated Derivative Action, including the filing of Defendants'
20 anticipated motions to dismiss. In the event counsel for the parties are unable to agree on a
21 proposed schedule for the conduct of further proceedings, plaintiffs' Lead Counsel and counsel
22 for the Defendants shall submit a joint status report setting forth their respective views regarding
23 further proceedings in the Consolidated Derivative Action.

24 12. The initial case management conference currently scheduled for May 24, 2017,
25 attendant deadlines, and related ADR procedures shall be deferred until the Court issues a ruling
26 on Defendants' anticipated motions to dismiss.

13. Pursuant to Fed. R. Civ. P. 5(b)(2)(E), all parties consent to service by e-mail of any document required to be served in the Consolidated Derivative Action.

IT IS SO STIPULATED.

Dated: May 12, 2017

ROBBINS ARROYO LLP

BRIAN J. ROBBINS

FELIPE J. ARROYO

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/s/ *Shane P. Sanders*

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*Counsel for Plaintiffs David Summer
and Jay Bowser and [Proposed] Lead
Counsel for Plaintiffs*

Dated: May 12, 2017

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/s/ Judson Lobdell

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Counsel for Defendants

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 12, 2017, a copy of the foregoing Stipulation and [Proposed]
3 Order Consolidating Related Derivative Actions and Appointing Lead Counsel for Plaintiffs was
4 electronically filed with the Clerk of Court in the following actions:

5 ***Summer v. Mayer, et al., Case No. 5:17-cv-00787-LHK***

6 ***Bowser v. Mayer, et al., Case No. 5:17-cv-00810-LHK***

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8 Notice of this filing will be sent via e-mail to all parties, in each action, by operation of
9 the Court's electronic filing system or by U.S. Mail to anyone unable to accept electronic filing
10 as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's
11 CM/ECF system.

12
13 /s/ Shane P. Sanders
14 SHANE P. SANDERS